IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

ORDER

(1)Dr.Alok Chaturvedi & Ors. vs. State of Rajasthan & Ors.
(S.B.C.Writ Petition No.328/99)
(2)Udaipur Dugdh Utpadak Sahkari Sang Karamchari Union, Udaipur vs. State of Rajasthan & Ors.
(S.B.C.Writ Petition No.336/99)

Dated:- 5th September,2006.

HON'BLE MR.JUSTICE MOHAMMAD RAFIQ

Mr.M.R.Singhvi,)Advocate
Mr.M.S.Singhvi,)Advocate for the petitioners.
Mr.P.S.Bhati, Advocate for the respondents.

REPORTABLE

These two writ petitions are being disposed by a common judgment because in both of them a common question of law and fact is involved as to whether employees of Udaipur Dugdh Utpadak Sangh Limited, Udaipur(for in short “the Sangh”) would be entitled to the benefits conferred upon them by resolution carried out by the Board of Directors of Sangh on 4.1.1999 with a view to giving effect to the settlement dated 13.12.1998 and the consequential order dated 26.12.1998.

The Board of Directors by its resolution dated 4.1.1999 decided to upgrade various posts and consequently revised the salaries, of the employees of the Sangh. Resultantly, posts held by them were upgraded and salaries were also increased. The Institutional Development Officer(for short “the I.D.O.”) of the Rajasthan Cooperative Dairy

Federation, Jaipur (for short “the R.C.D.F.”) however in purported exercise of his powers u/s 32(1) of the Rajasthan Rajasthan Cooperative Societies Act, 1965(for short “the Act of 1965”) issued a notice to the Sangh on 23.1.1999 for rescinding the said resolution.

It may be noted that the said I.D.O. exercises the powers of Registrar in relation to all the Dugdh Utpadak Sangh throughout the State for the purpose of the provisions of the Act of 1965. Section 32(2) of the Act of 1965 provided that on receipt of an intimation from the Registrar, of his proposal to rescind the resolution under sub-section(1), the said resolution shall cease to have effect until the Registrar passes final orders in the matter. Although the employees of the Sangh were granted benefits of the revised salary on the upgraded posts but as a result of noticve issued by the I.D.O. U/s 32(2) supra, their salaries were revised downwards following directions received from the Managing Director of the R.C.D.F. in his letter dated 30.1.1999. Initially, a stay order was passed in favour of the petitioners on 9.2.1999 in the present proceedings. The said stay order was however later vacated on 5.4.1999. The I.D.O. by his order dated 8th October, 1999 finally rescinded the aforementioned resolution of the Board of Directors. Hence these writ petitions.

In the present writ petitions, the petitioners have challenged constitutional validity of Section 32(2) of the Act of 1965 as also legality of notice dated 23.1.1999, communication dated 30.1.1999 and order dated 8.10.1999.

So far as the challenge to the constitutional validity of Section 32(2) of the Act of 1965 is concerned, a Division Bench of this Court by order dated 21.4.2003 held that it was no longer necessary to examine the same in view of the fact that the Act of 1965 has since been repealed by the Rajasthan Cooperative Societies, 2001 and the issue had become academic. The writ petition was therefore ordered to be listed before Single Bench and this is how these matters are laid before the Single Bench now.

Correctness of the notice dated 23.1.1999 and the communication dated 30.1.1999 need not be decided in these proceedings because they have ultimately culminated into passing of the final order dated 8.10.1999 by the I.D.O. who in exercise of his powers u/s 32 of the Act of 1965 rescinded the resolution dated 4.1.1999 passed by the Board of Directors of the Sangh. I am therefore called upon to examine the validity of order dated 8.10.1989 passed by the I.D.O.

I have heard Mr.M.R.Singhvi and Mr.M.S.Singhvi, learned counsels for the petitioners and Mr.P.S.Bhati, learned counsel for the respondents and perused the record.

Both the learned counsel in assenting the validity of the order dated 8.10.1999, have confined their arguments only on the aspect of the entitlement of the petitioners to right of hearing prior to passing of the order dated 8.10.1999. Instead of examining merits of the case, what is therefore required to seen is whether impugned order dated 8.10.1999

is liable to be annulled for favour of the respondents in providing the petitioners a prior opportunity of hearing. It is the common grievance of both the petitioners that none of them were provided an opportunity of hearing prior to passing of the order dated 8.10.1999 even though they have been seriously prejudiced by such order because not only their promotions on higher post had been taken away but their salaries have also been substantially reduced. This has been done without any notice to the petitioners and in utter violation of the principles of natural justice. Reliance in this connection has been placed on a Division Bench judgment of this Court in Jaisa Ram Mali vs. The Assistant Registrar, Cooperative Societies, Sirohi & Anr.(D.B.C.Special Appeal No.901/95) decided on 3.1.1996 and another Single Bench decision of this Court in Bhanwar Singh vs. State of Rajashan & Ors., reported in WLR 1992(S) Raj. p.567. In these two matters, this Court examined whether the Registrar while exercising the jurisdiction u/s 32 of the Act of 1965 was required to hear employees of the societies whose resolutions are sought to be rescinded if rescinding resolution adversely effect the employees and cause serious and grave prejudice to them. Learned Single Judge of this Court in Bhanwar Singh vs. State(supra) while examining this issue, held as under :-

> "This is true that Joint Registrar, Cooperative Societies, Bikaner purported to act in exercise powers vested in him by Section 32, Rajasthan Cooperative Societies Act, 1965, yet an important aspect of the case is that Annex. 14 was to affect the petitioner prejudicially. It is settled principle of law that no order can be passed affecting rights of a person unless he has been given an opportunity of being heard in the matter. Ours is a society governed by rule of law and all actions of administrative authority must be governed by

> basic legal doctrines. This is true that Section 32 of the Cooperative Societies Act does not speak of any opportunity of hearing to an employees to be affected by order passed with this Section by the Registrar, Cooperative Societies. But as state above, the order Annex.14 seriously and gravely prejudices the rights of the petitioner."

The aforesaid judgment came up for consideration before the Division Bench in Jaisa Ram Mali vs. The Assistant Registrar(supra) and the Division Bench while approving the ratio thereof, reiterated the same view in the following terms :-

> "In Section 32 of the Act specific provision is made that an opportunity of being heard be given to the society concerned, but that does not mean that the legislature intended that the rules of natural justice be dispensed with in cases where the party to be affected by the decision that may be taken by the Assistant Registrar is other than the society. There is nothing to indicate in the entire scheme of Section 32 or in the scheme of the Act that the legislature intended to exclude the observance of principle of natural justice when the Assistant Registrar exercises power under section 32 of the Act and his decision is likely to affect other parties.
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> 7. When the provision of a statute is silent as regards observance of principle of natural justice it is to be assumed that the principles of natural justice are to be observed by the authority concerned on whom the power to take decision is conferred. In substance the principles of natural justice are nothing but action in fair play. The legislature assumes that the authority on whom the power to take impartial decision is conferred shall act in just, fair and reasonable manner. There need not be commanded from the legislature to the authority concerned that it shall act fairly. To act fairly is an implied duty of all the authorities on whom the power to take just and impartial decision is conferred. Therefore, simply because there is no mention about an opportunity of being heard to the persons likely to be adversely affected by the decision that may be taken by the

Assistant Registrar, it cannot be said that the observance of principles of natural justice by the Assistant Registrar while exercising powers under section 32 of the Act have been excluded by the legislature.

8. In this connection reference may be made to a decision of learned Single Judge of this High Court reported in W.L.R.(S) Raj.-567 Bhanwar Singh vs. State of Rajasthan & Ors. In that case Joint Registrar, Cooperative Society, Bikaner had passed an order rescinding the resolution of Board of Directors of the Society concerned by which it was decided to absorb the petitioner employee. The petitioner employee challenged the legality and validity of the order passed by the Joint Registrar, Cooperative Societies, Bikaner by filing a writ petition. It was contended before the court that the order was passed by the Joint Registrar, Cooperative Societies without affording an opportunity of being heard to him and therefore the order was illegal and void. In this connection in Para 8 of the reported decision the learned Single Judge has observed as follows:-

"It is settled principle of law that no order can be passed affecting rights of a person unless he has been given an opportunity of being heard in the matter. Ours is a society governed by rule of law and all actions of administrative authority must be governed by basic legal doctrines. This is true that Section 32 of the Cooperative Societies Act does not speak of any opportunity of hearing to an employee to be affected by order passed with this section by the Registrar, Cooperative Societies. But as stated above, the order Annex.14 seriously and gravely prejudices the rights of the petitioner. This is true that the petitioner was inducted against a temporary post, which was to last during the course of the Antyoday Project. But this is equally true that the Registrar Cooperatives Department, Rajasthan by letter Annex.2 dated 11.3.83 directed absorption of the staff serving under the Antyoday Scheme in the regular cadre of Bank. This order conferred a valuable right upon the petitioner, it conferred a right on him to be absorbed under the Bank. The resolution of the Board of Directors of the bank recommended appointment of the petitioner to the post of Assistant Executive Officer. This resolution also further conferred a valuable right upon the petitioner. By Annex.14, the Joint Registrar, Cooperative Societies purported to set

> at naught the twin valuable rights which had accrued obligatory and mandatory for the Joint Registrar, Cooperative Societies, Bikaner to hear the petitioner before passing order Annex.14."
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> We are in respectful agreement with the aforesaid observations made by the learned Single Judge in the aforesaid reported decision."

In view of the settled proposition of law as aforestated, I need not made elaborate discussion of law all over again. In my view therefore present writ petitions deserve to be allowed on the sole ground that while passing the order dated 8.10.1999, the I.D.O. has not provided an opportunity of hearing to any of the employees of the Sangh including the petitioners and thereby violated principles of natural justice. This has seriously prejudiced the petitioners in that as a result of withdrawal of upgradation of their posts, they stood reverted and their salaries reduced. Impugned order is therefore liable to be quashed and set aside.

In the result, the writ petitions are allowed and the order dated dated 8.10.1999 is quashed and set aside. The petitioners however shall not be entitled to automatic re-instatement on the upgraded posts and salary of such posts as a result of quashment of the order dated 8.10.1999. The I.D.O. shall however pass a fresh order after providing an opportunity of hearing to the petitioners and any such employees of the Sangh who may be desirous to be heard on the merits of the matter. In the event of the I.D.O. upholding the resolution dated 4.1.1999, the petitioners and the other employees of the Sangh however shall be entitled to notional benefits of the salary of the upgraded posts as

if the resolution pursuant to which such posts were upgraded had never been rescinded. The aforesaid exercise should be completed by the I.D.O. within a period of four months from the date of production of copy of this judgment .

The writ petitions are accordingly allowed. There shall be no order as to costs.

(MOHAMMAD RAFIQ),J.